WEST VIRGINIA CODE CHAPTER 44D ARTICLE 6

WV Legislature

§44D-6-601. Capacity of grantor of revocable trust.

The capacity required to create, amend, revoke or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.

WV Legislature

§44D-6-602. Revocation or amendment of revocable trust.

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the grantor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this chapter.

(b) Unless the terms of a trust provide otherwise, if a revocable trust is created or funded by more than one grantor:

(1) To the extent the trust consists of community property, the trust may be revoked by either spouse acting alone but may be amended only by joint action of both spouses;

(2) To the extent the trust consists of property other than community property, each grantor may revoke or amend the trust with regard the portion of the trust property attributable to that grantor's contribution; and

(3) Upon the revocation or amendment of the trust by fewer than all of the grantors, the trustee shall promptly notify the other grantors of the revocation or amendment.

(c) The grantor may revoke or amend a revocable trust:

(1) By substantially complying with a method provided in the terms of the trust instrument; or

(2) If the terms of the trust instrument do not provide a method, by any other method manifesting clear and convincing evidence of the grantor's intent.

(d) Upon revocation of a revocable trust, the trustee shall deliver the trust property as the grantor directs.

(e) A grantor's powers with respect to revocation, amendment, or distribution of trust property may be exercised by an agent under a power of attorney only to the extent expressly authorized by the terms of the trust instrument or the power.

(f) A conservator of the grantor or, if no conservator has been appointed, a guardian of the grantor may exercise a grantor's powers with respect to revocation, amendment or distribution of trust property only with the approval of the court supervising the conservatorship or guardianship.

(g) A trustee who does not know that a trust has been revoked or amended is not liable to the grantor or grantor's successors in interest for distributions made and other actions taken on the assumption that the trust had not been amended or revoked.

(h) No trust which is otherwise irrevocable because the trust instrument expressly provides or states that the trust is irrevocable is or becomes revocable by the grantor because the grantor is the sole beneficiary of the trust.

WV Legislature

§44D-6-603. Grantor's powers; powers of withdrawal.

(a) While a trust is revocable and the grantor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the grantor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a grantor of a revocable trust under this section to the extent of the property subject to the power.

(c) When a trust is revocable, the trustee may follow a direction of the grantor that is contrary to the terms of the trust instrument.

WV Legislature

§44D-6-604. Limitation on action contesting validity of revocable trust; distribution of trust property.

(a) (1) An interested person may commence a judicial proceeding to contest the validity of a trust that was revocable at the grantor's death within the earlier of:

(A) Two years after the grantor's death; or

(B) Six months after the trustee has sent the interested person a copy of the trust instrument and a notice informing the interested person of the trust's existence, of the trustee's name and address, and of the time allowed for commencing a proceeding.

(2) Notwithstanding subdivision (1) of this subsection:

(A) If the interested person is under the age of eighteen years or is a convict or mentally incapacitated person, the interested person has one year after he or she becomes of age or the disability ceases, to commence a judicial proceeding; and

(B) If the interested person resided out of the state at the time the interested person received the trust instrument and notice, the interested person has one year after receipt thereof to commence the judicial proceeding.

(b) Upon the death of the grantor of a trust that was revocable at the grantor's death, the trustee may proceed to distribute the trust property in accordance with the terms of the trust instrument. The trustee is not subject to liability for doing so unless:

(1) The trustee knows of a pending judicial proceeding contesting the validity of the trust; or

(2) A potential contestant has notified the trustee of a possible judicial proceeding to contest the trust and a judicial proceeding is commenced within sixty days after the contestant sent the notification.

(c) A beneficiary of a trust that was revocable at the grantor's death that is determined to have been invalid is liable to return any distribution received.

WV Legislature